

REMARKS

Upon entry of the above amendment, claims 20-30 will be pending in this application. Claims 1-19 have been canceled without prejudice or disclaimer. Support for the new claims 20-30 can be found throughout the specification and the claims as originally filed. No new matter has been added.

In order to assist the Examiner in locating the basis in the specification for new claims 20-30 presented herein, applicants respectfully submit that proper basis exists for the new claims at the following locations in the specification as filed:

New claim 20 has basis on page 12, 4th full paragraph through page 13, 1st paragraph of the specification as filed.

New claim 21 has basis on page 14, 1st full paragraph.

New claims 22-23 have basis on page 11, 2nd paragraph.

New claim 24 has basis on page 11, 3rd and 4th paragraphs.

New claim 25 has basis on page 11, 4th paragraph.

New claim 26 has basis in original claim 14.

New claim 27 has basis in original claim 19.

New claim 28 has basis on page 9, 5th full paragraph.

New claim 29 has basis on page 9, 6th full paragraph.

New claim 30 has basis on page 27, 1st full paragraph.

In view of the remarks set forth herein, further and favorable consideration is respectfully requested.

- I. At page 2 of the Official Action, claims 1-19 are rejected under 35 USC § 102(b or e) as being anticipated by or, in the alternative, under 35 USC § 103(a) as obvious over Parker (GB 2,250,978), Pora (U.S. Patent No. 5,242,055), Volckening et al. (U.S. Patent No. 2,801,002), Friberg et al. (U.S. Patent No. 6,024,222), Fry et al. (U.S. Patent Application No. 2005/0082194), Breu et al. (U.S. Patent Application No. 2005/0035023), Patterson (U.S. Patent No. 6,675,972), or ColDepietro et al. (U.S. Patent No. 6,273,260).***

In the Official Action, the Examiner asserts that each of the cited references either anticipate claims 1-19 or render them obvious.

Applicants traverse this rejection, and also point out to the Examiner that previously pending claims 1-19 have been canceled without prejudice or disclaimer, rendering the basis for this rejection moot.

Applicants have introduced new claims 20-30 and respectfully submit that none of the cited references either anticipate or render obvious the presently pending claims.

The test for anticipation is whether each and every element as set forth is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131. The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

New claim 20 is directed to a medicine pack, comprising a plurality of blister units (1), said blister units (1) each having a protective case (6), with a blister strip (4) located therein, the blister strip (4) being fixedly connected to the protective case (6), the protective case (6) being able to be unfolded or opened out, and also an outer package (5) for receiving the blister units (1), the outer package (5) being a base box (5a) which

is configured in such a way that the pack content can be fixed in the inside of the base box (5a), characterized in that resilient tabs (35) at opposite sides on the inside of the base box (5a) are present, which resilient tabs (35) are in each case permanently connected to the base box (5a) via at least one common bend / fold edge (36) at the opening (38) of the base box (5a).

Claims 21-30 depend either directly or indirectly from claim 20.

Applicants respectfully submit that none of the cited references describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b or e).

In particular, Parker does not disclose each and every element of the presently claimed subject matter. Parker is directed to a blister packaging arrangement having fold lines, such that a first and second area can be folded to lay one area above the other. According to Parker, a dispensing package may be arranged to accommodate a predetermined number of folded second blister packaging arrangements. See Parker at the abstract. Applicants respectfully submit that, in contrast to the presently claimed subject matter, Parker describes a blister packaging arrangement for pharmaceutical products that may comprise a carton for holding several of the blister packaging arrangements. According to Parker, the carton is provided with a hinged flap that can be opened and closed to allow one packaging arrangement to pass through, and additionally, the carton is located in a holder which may be free standing or wall mounted. See Parker at pages 4 and 5. In contrast to the presently claimed subject matter, Parker does not describe an outer package having resilient tabs in the inside as a means for retention of the pack content. However, the presently claimed subject

matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, Parker does not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, Parker does not describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b).

Further, the Pora reference **does not disclose** each and every element of the presently claimed subject matter. Pora is directed to a unit dose packaging system comprising a base panel containing medication unit compartments and a cover panel overlying the base panel so as to accommodate relative movement of the cover panel and base panel between open and closed configurations. See Pora at column 3, lines 1-30. According to Pora, the packaging systems may be arranged in a row in a container, the structure of the container allowing the packages to be easily removed from the container one at a time. See Pora, column 5, lines 9-17.

In contrast to the presently claimed subject matter, Pora does not describe an outer package having resilient tabs in the inside as a means for retention of the pack content. However, the presently claimed subject matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, Pora does not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, Pora does not describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b).

Volckening et al. **do not disclose** each and every element of the presently claimed subject matter. Volckening et al. is directed to an envelope for the packing of a plurality of inner bags or packages. According to Volckening et al., the envelope comprises a flexible folder to which one edge portion of the package is secured and a flap attached to overlie the front of the package. See Volckening et al. at column 1, lines 41-57.

In contrast to the presently claimed subject matter, Volckening et al. do not describe an outer package having resilient tabs in the inside as a means for retention of the pack content. However, the presently claimed subject matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, Volckening et al. do not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, Volckening et al. do not describe each and every element of the presently claimed subject matter, as required for

anticipation under 35 USC § 102(b).

Friberg et al. **do not disclose** each and every element of the presently claimed subject matter. Friberg et al. is directed to a foldable blister pack for drugs comprising a rigid foil containing blister packages and another foil, referred to as the lid, which seals the opening of the blisters. See Friberg et al. at column 1, lines 6-14. In contrast to the presently claimed subject matter, Friberg et al. do not describe an outer package having resilient tabs in the inside as a means for retention of the pack content.

In contrast to the presently claimed subject matter, Friberg et al. do not describe an outer package having resilient tabs in the inside as a means for retention of the pack content. However, the presently claimed subject matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, Friberg et al. do not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, Friberg et al. do not describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b).

Fry et al. **do not disclose** each and every element of the presently claimed subject matter. Applicants note that Fry et al. is only available for the purposes of this rejection under 35 USC § 102(e). Fry et al. is directed to a blister pack dispensing device comprising a housing for accommodating the blister pack, the housing comprising a first wall provided with a plurality of apertures arranged to correspond to

blisters on the blister pack, a second opposing wall carrying a corresponding plurality of buttons, and a manually operable locking mechanism. See Fry et al. at paragraph [0006].

In contrast to the presently claimed subject matter, Fry et al. do not describe an outer package having resilient tabs in the inside as a means for retention of the pack content. However, the presently claimed subject matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, Fry et al. do not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, Fry et al. do not describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b).

Breu et al. **do not disclose** each and every element of the presently claimed subject matter. Applicants note that Breu et al. is only available for the purposes of this rejection under 35 USC § 102(e). Breu et al. is directed to a packaging system for protecting blister sheets comprising a folding box having a carrier section. See Breu et al. at paragraph [0001]. According to Breu et al., the blister sheets are adhesively bonded to the carrier section of the packaging system. See Breu et al. at paragraph [0013], and Figures 1-6.

In contrast to the presently claimed subject matter, Breu et al. do not describe an outer package having resilient tabs in the inside as a means for retention of the pack

content. However, the presently claimed subject matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, Breu et al. do not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, Breu et al. do not describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b).

Patterson **does not disclose** each and every element of the presently claimed subject matter. Applicants note that Patterson is only available for the purposes of this rejection under 35 USC § 102(e). Patterson is directed to a childproof blister packaging comprising a blister pack, a second portion folded on top of the penetrable foil lid of the blister pack, and third portion folded on top of the second portion and sealed with a suitable adhesive. See Patterson at the abstract.

In contrast to the presently claimed subject matter, Patterson does not describe an outer package having resilient tabs in the inside as a means for retention of the pack content. However, the presently claimed subject matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, Patterson does not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as

recited by the presently pending claims. Accordingly, Patterson does not describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b).

ColDepietro et al. **do not describe** each and every element of the presently claimed subject matter. ColDepietro et al. is directed to a packaging system for storing and dispensing individual doses of medication, comprising a series of sheets adapted to fold over each other with doses of medication removably held thereon. See ColDepietro et al. at the abstract.

In contrast to the presently claimed subject matter, ColDepietro et al. do not describe an outer package having resilient tabs in the inside as a means for retention of the pack content. However, the presently claimed subject matter contains resilient tabs (35) at opposite sides on the inside of the base box (5a) which prevent the pack's content from falling or slipping out of the outer package, even in the absence of a hinged lid, sealing strap or similar device. See the present specification at page 12, paragraph 5.

Again, ColDepietro et al. do not describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, ColDepietro et al. do not describe each and every element of the presently claimed subject matter, as required for anticipation under 35 USC § 102(b).

In summary, applicants respectfully submit that **none** of the cited references teach each and every element of the presently claimed subject matter, as **required** for anticipation under 35 USC § 102(b or e). Therefore, the cited references cannot

possibly anticipate the presently claimed subject matter. As such, Applicants respectfully request that the Examiner acknowledge the patentability of new claims 20-30 over the cited references.

Regarding the obviousness rejection of claims 1-19 under 35 USC § 103(a), "in the alternative", Applicants again respectfully traverse this rejection and point out to the Examiner that claims 1-19 have been canceled without prejudice or disclaimer. Further, applicants respectfully submit that the references of record also do not establish a prima facie case of obviousness against new claims 20-30.

To establish a prima facie case of obviousness, the PTO must satisfy three requirements. First, as the U.S. Supreme Court held in *KSR International Co. v. Teleflex Inc. et al.*, 550 U.S. 398 (2007), "a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. ...it [may] be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. ...it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." (*KSR*, supra, slip opinion at 13-15). Second, the proposed modification of the prior art must have had a reasonable expectation of

success, determined from the vantage point of the skilled artisan at the time the invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ 1016, 1023 (C.C.P.A. 1970). Lastly, the prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

As previously discussed, none of the cited references, either taken alone or in combination, describe the use of resilient tabs in the inside of the outer package as a means of retention of the pack content in the outer package as recited by the presently pending claims. Accordingly, none of the cited references, either taken alone or in combination, teach or suggest all the elements of the presently pending claims as required by *In re Wilson*, supra. On this basis alone, no allegation of a prima facie case of obviousness sustains merit.

Further, applicants respectfully direct the Examiner's attention to page 13, first full paragraph of the instant specification. In this paragraph, the mode of action of the resilient tabs is discussed in great detail. In particular, the specification states, in relevant part:

"In a particularly preferred embodiment, the resilient tabs come into contact with the narrow sides of the blister units and of the leaflet, since all parts of the pack content are then protected against accidentally falling out or slipping out of the outer package, for example even irrespective of how many blister units are located in the outer package. The resilient tabs are therefore preferably fixed on the side walls of the outer package. If, for example, the content of a blister unit is used up and the latter is not placed back in the outer package, the remaining parts of the pack content are also protected against accidentally falling out or slipping out of the outer package. When a blister unit or the leaflet is inserted into the outer package, this is done counter to the resistance of the resilient tabs which,

although they yield resiliently, nevertheless apply pressure from opposite sides onto the narrow sides of the blister unit or leaflet and clamp these in the inside of the outer package. The friction which arises between the resilient tabs and the blister units and leaflet fixes the pack content in the inside of the outer package and thus ensures that the pack content cannot slip or fall too easily and thus accidentally out of the package.”

Therefore, in addition to the fact that the references of record do not disclose the resilient tabs of the presently claimed subject matter, the references of record further do not even recognize the concept of a packaging system which exhibits sufficient friction (and thus, retention force) on the pack content so that the pack content does not fall or slip out of the base box. As such, the references of record do not even recognize the function of the resilient tabs of the presently claimed subject matter.

Even further, the Examiner has not provided any support whatsoever that the modifications of the prior art that would be required to be made to arrive at the presently claimed subject matter, would have a reasonable expectation of success. Thus, the Examiner has failed to provide any substantive evidence of this further requirement of a prima facie case of obviousness, as required by *Amgen, Inc. v. Chugai Pharm. Co.*, supra.

Accordingly, none of the cited references render pending claims 20-30 obvious within the meaning of 35 USC § 103 (a).

Since it is clear that the references of record neither anticipate presently pending claims 20-30 nor render them obvious under 35 U.S.C. §§102 or 103, the Examiner is respectfully requested to withdraw the rejection of the previously pending claims and not re-assert the references of record against the presently pending claims.

CONCLUSION

Based upon the above amendment and remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to allow pending claims 20-30 of this application. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned attorney if he has any questions or comments.

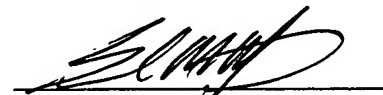
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